

BELLSOUTH OPPOSITION

WC DOCKET NO. 02-238

EXHIBIT R

PART 2 OF 2

Q. Provision of Unbundled Local Loops for DSL Service.

Supra

Supra requests reconsideration of our Order regarding the provision of unbundled local loops for DSL service. Supra asserts that when existing loops are provisioned on digital loop carrier facilities, and Supra requests such loops in order to provide xDSL service, BellSouth should provide Supra with access to other loops or subloops so that Supra may provide xDSL service to a customer. Supra believes that, pursuant to 47 C.F.R. §51.319, an ILEC is required to provide nondiscriminatory access to unbundled packet switching capability only where each of the four stated conditions are satisfied. Here, Supra contends that BellSouth has refused to allow Supra to collocate in remote terminals, and has not supplied Supra with the information necessary to locate and identify existing terminals, or properly complete, the collocation applications. Supra states that the FCC has addressed this in the Final Order of the UNE Remand Order, FCC 99-238 at ¶ 313, which holds that:

. . . if a requesting carrier is unable to install its DSLAM at the remote terminal. . . the incumbent LECs must provide requesting carriers with access to unbundled packet switching in situations in which the incumbent has placed its DSLAM in a remote terminal.

Supra maintains that we have the authority to provide contractual support for this prong of the issue, and requests that we order BellSouth to provide Supra, at Supra's option, the ability to order collocated DSLAM and unbundled access to packet switching as a UNE at TELRIC cost, wherever BellSouth deploys local switching over DLC facilities, at Supra's request.

Supra also asserts that we denied it discovery of network information. We then opined that Supra failed to meet the "impair" standard of 47 C.F.R. § 51.317(b)(1) says Supra. Our assertion that BellSouth's offer to permit requesting carriers to collocate DSLAM equipment at the RT within about 60 days of a request, is of little comfort in Supra's eyes. Supra believes that given BellSouth's track record with Supra, BellSouth will come up with a plethora of excuses to delay nearly forever the collocations.

Further, Supra asserts that as a UNE-P provider, it should not be required to collocate in order to provide DSL service. It contends that the availability of third-party DSL services that does not use the BellSouth FCC #1 tariffed ADSL transport is non-existent. Supra states that BellSouth has refused to allow this or any other BellSouth DSL component to be deployed over a Supra UNE-P line. Thus, says Supra, there is no third-party market capable of supporting DSL over UNE-P lines except BellSouth, which has claimed a legal right not to serve that market. Supra believes it has no alternative but to attempt to collocate in the estimated 3125 remote terminals in Florida to achieve ubiquitous coverage. Supra believes that our endorsement of BellSouth's position amounts to a barrier to entry. Supra notes that had BellSouth been compelled to provide this level of network information, it could have properly addressed the "impair" standard with information that has since been made accessible to the public as of December 31, 2001.

Finally, Supra believes that a double standard has been applied in favor of BellSouth. Supra contends that this is evidenced by our findings regarding BellSouth's provision of collocation at remote terminals in this issue. Supra argues that we simply accepted BellSouth's representation that collocation in remote terminals could be accomplished in 60 days. Supra contends that its own evidence that for three years BellSouth has delayed implementation of our Orders in Docket No. 980800-TP, FPSC Order PSC-99-0060-FOF-TP, and the findings of the commercial arbitrators was not given due consideration.

Supra believes that we should resolve this problem by moving beyond the rules the FCC established, as provided in FCC Order 96-325, First Report and Order on Local Competition, paragraphs 135-137. Supra states that our ability to resolve this problem by going beyond the FCC's requirements was not seriously considered and is due reconsideration.

BellSouth

BellSouth states that in the UNE Remand Order at paragraph 311, the FCC expressly declined "to unbundle specific packet switching technologies incumbent LECs may have deployed in their networks." Thus, contends BellSouth, Supra is not entitled by law to unbundled packet switching unless four circumstances exist

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simultaneously as set out in the FCC rules.⁶ BellSouth asserts that Supra does not intend to collocate DSLAM equipment in BellSouth's remote terminals, but seeks a "free ride" off BellSouth's network investment.

BellSouth also contends that while Supra disputes BellSouth's claim that collocation in remote terminals could be accomplished in 60 days, Supra offered no evidence at the hearing to support its claim that remote terminal collocation would take less time. As such, BellSouth argues that Supra has no basis for disputing BellSouth's estimate.

Decision

Supra has not identified a point of fact or law which was overlooked or which we failed to consider in rendering our decision. See Order No. PSC-02-0413-FOF-TP at pp. 116-118. Supra also takes the position that data released to the public after December 31, 2001, demonstrates how badly Supra's case was prejudiced by our earlier denial of a discovery request. This new argument does not lay the foundation for reconsideration. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974). Thus, Supra's request for reconsideration of this issue is denied.

S. Access to Databases.

Supra

Supra argues that BellSouth's ALEC OSS interfaces provide discriminatory access and that pursuant to the 1996 Act and FCC rules and orders, Supra is entitled to nondiscriminatory access to BellSouth's OSS. Supra believes that the evidence it has presented establishes that, absent direct access to BellSouth's own OSS, Supra will never be on equal footing with BellSouth, and will therefore always be at a competitive disadvantage. Supra believes

⁶The record reflects that BellSouth actually allows collocation in its remote terminals; thus, at least one of the four conditions is not met.

that its confidential exhibits, witness testimony, substantial citations, and the

. . . mountain of evidence put forth by Supra was virtually ignored by this Commission, and without pointing to any record evidence, the Commission simply accepted BellSouth's argument that its OSS interfaces provide ALECs with nondiscriminatory access in accordance with FCC rules.

Motion at p. 127.

Supra also believes that we failed to acknowledge the 10.9% of ALEC LSRs that are electronically submitted through BellSouth's ALEC OSS but which fall out for manual/human intervention. This compares, says Supra, to the 0% mechanized fallout experienced by BellSouth, and is in addition to the 11% of ALEC submitted LSRs that must be manually submitted in the first place. Supra questions our findings of technical infeasibility in ALECs obtaining direct access to BellSouth's OSS interfaces. Supra does not believe that BellSouth has met its burden of proof of that infeasibility. Supra also believes we could have used our ability to propound discovery to resolve this matter if we believed that direct access is not technically feasible. Supra believes that it provided thousands of pages of evidence, while BellSouth proffered non-credible exhibits and allegations of infeasibility. Supra contends that we should reconsider this issue, and BellSouth should be ordered to provide Supra with direct access to its OSS.

BellSouth

BellSouth maintains that the variety of interfaces available to ALECs provide them with non-discriminatory access to BellSouth's OSS as required by the 1996 Act. BellSouth believes that Supra seeks a process which must be identical to every function, system, and process used by BellSouth. According to BellSouth, this does not conform to the legal standard established by the Act and the FCC. BellSouth asserts that the FCC requires an ILEC such as BellSouth to provide access to OSS functionality for pre-ordering, ordering, provisioning, maintenance and repair, and billing functionality for resale services in substantially the same time and manner as BellSouth provides for itself. In the case of UNES,

states BellSouth, it must provide a reasonable competitor with a meaningful opportunity to compete. BellSouth maintains that the FCC follows a two-step approach to determine if a BOC has met the non-discrimination standard for each OSS function; (1) whether there are in place the necessary systems and personnel to provide sufficient access to each of the necessary functions, and (2) whether the BOC is adequately assisting competing carriers to understand how to implement and use all the OSS functions available to them. Then, says BellSouth, the FCC will determine whether the OSS functions deployed are operationally ready.

BellSouth responds that if Supra were to actually obtain access to the retail ordering systems used by BellSouth, it could only submit orders for BellSouth retail services. BellSouth does not believe that Supra has made a showing that the interfaces available to it are insufficient, and requests that the Motion be denied.

Decision

Supra has not identified a point of fact or law which was overlooked or which we failed to consider in rendering our decision. See Order No. PSC-02-0413-FOF-TP at pp. 120-122. We find Supra's reading of the FCC's Third Report and Order flawed. By way of example, Supra places considerable emphasis on paragraph 433, which states that "We therefore require incumbent LECs to offer unbundled access to their OSS nationwide." A proper reading would recognize that the LEC has to provide nondiscriminatory access to the functionality of the incumbent's OSS in order for the ALEC to have a meaningful opportunity to compete. We do not construe The FCC's Order to require unbridled access to all of the incumbent's databases. The balance of Supra's discussion reargues points raised in various forms throughout the proceeding, and as such do not establish a basis for reconsideration.

- T. Standard Message Desk Interface-Enhanced (SMDI-E) and Corresponding Signaling associated with Voice Mail Messaging.

Supra

Supra's position is that SMDI and Inter-Switch Voice Messaging Service (ISVM) signaling provided to voicemail systems are comprised of core hardware and software components of the Class 5 end office switch combined with SS7 signaling. As such, says Supra, they are already included in the cost models used to derive the UNE rate. Supra believes that BellSouth's own testimony on this matter is consistent with Supra's position. Supra contends that witness Kephart's testimony which focused largely on the transport facility used to carry the SMDI, and not the signal itself, was confused to be part of SMDI. Supra notes that the "data link" referenced by witness Kephart is not included in the BellSouth FCC #1 tariff for SMDI and even under the tariff must be ordered separately, or provisioned by a UNE or by Supra. Supra does not believe we understood the technical nature of this issue. Supra asserts that an error in the testimony of witness Kephart was refuted by Mr. Nilson, yet made its way into our Order.

Supra believes our analysis is flawed in that it is based upon the misleading conclusion of witness Kephart, which asserts that Supra was trying to provide an information service or a non-telecommunications service. Supra contends that it never represented what it intended to make with the unbundled SMDI, ISVM and its links, and it believes such information is irrelevant to this issue. According to Supra, 47 C.F.R. § 51.309(c) protects it from this very sort of discrimination. Supra believes we ignored evidence that such functionality was already part of the cost basis of ULS.

It is Supra's contention that we went on to reverse our earlier finding that voicemail is a telecommunications service, and without any consideration of the legal issues, we found that BellSouth did not have to provide SMDI or SMDI-E as a feature, function, and capability of the ULS UNE. Supra states that we failed to consider the argument in witness Nilson's direct testimony which shows that there is no separate signaling network required to transmit messages switch to switch. Supra asserts that

it is all part of the basic switch port functionality, and has been so for many years. Supra also states that the Lucent documentation cited by witness Nilson shows that there are no elements in witness Kephart's definition of SMDI-E that are not required to place a voice call between two switches, except the data link. Supra agrees with BellSouth that the data link is a separately priced transport facility, but maintains that the SMDI and SMDI-E (ISMDI) signaling are inseparable from the cost of providing basic local service.

Supra also believes that we failed to recognize that BellSouth and Supra actually agreed that SMDI is a feature of the ULS. We incorrectly focused on the data link, says Supra, an item that was not in contention between the parties. Supra argues that we, therefore, fashioned our own findings which are not supported by the record.

BellSouth

BellSouth believes that Supra attempts to combine various network elements in its discussion of unbundled local switching. BellSouth argues that Supra defines unbundled SMDI as part of the signaling network, rather than as part of unbundled local switching, which BellSouth asserts is the issue at hand. Indeed, says BellSouth, access to unbundled local switching and access to unbundled signaling and call related databases are covered under two different 271 checklist items in the 1996 Act. BellSouth believes that Supra's Motion might lead to the erroneous conclusion that everything is part of unbundled local switching if it is used during a call. BellSouth urges us to ignore Supra's attempt to blur the clear lines drawn by the Telecommunications Act, such that Supra would receive SMDI functionality for free.

Decision

Supra has failed to identify a point of fact or law which was overlooked or which we failed to consider in rendering our decision. We properly considered the evidence and record presented and rendered a decision based upon the material proffered. See Order No. PSC-02-0413-FOF-TP at pp. 128-131. The fact that we arrived at a different conclusion from Supra is not grounds for

reconsideration. As such, Supra's Motion regarding this issue is denied.

V. Capacity to Submit Orders Electronically.

Supra

Supra seeks a contractual provision requiring BellSouth to provide Supra with the capacity to submit orders electronically for all wholesale services and elements. Supra believes that we, as well as BellSouth, simply miss the point on this issue. Supra does not submit service orders because BellSouth refuses to provide Supra with the ability to do so. Rather, according to Supra, it submits LSRs, which BellSouth then processes into service orders. This is different from BellSouth's retail operation, says Supra, which does submit service orders. Supra then incorporates its arguments addressing access to databases (Section/Issue S), and contends that our decision is grounded in the erroneous finding that BellSouth does not have to provide nondiscriminatory access to BellSouth's OSS.

BellSouth

BellSouth asserts that there is no requirement that every LSR be submitted electronically, claiming that its own retail operations use manual processes for certain order types. BellSouth believes that Supra's Motion points to no fact or legal principle that we failed to consider, and as such reconsideration is not appropriate.

Decision

We find that Supra has not identified a point of fact or law which was overlooked or which we failed to consider in rendering our decision. As noted in the Order, Supra presented very limited testimony on this issue. See Order No. PSC-02-0413-FOF-TP at p. 133. Although Supra more fully develops its argument in its Motion for Reconsideration, this is inappropriate at this stage and essentially constitutes new argument. Thus, Supra's additional, more fully developed arguments on this point shall not be considered, because these arguments could have been addressed by Supra in its prior pleadings. Furthermore, they do not identify a

mistake of fact or law in our decision. As such, Supra's Motion regarding this issue is denied.

W. Manual Intervention on Electronically Submitted Orders..

Supra

According to Supra, we failed to address Supra's evidence in the record that 10.9% of LSRs that are electronically submitted through BellSouth's ALEC OSS fall out for manual/human intervention, while in comparison BellSouth experiences 0% fallout of its submitted service orders. Supra indicates that some complete and correct LSRs do fall out for manual intervention. Supra maintains that BellSouth raised, as a red herring, the argument regarding manual handling of complex orders prior to their electronic submission. Supra does not believe that our decision addresses the evidence as submitted by Supra, and requests that we require BellSouth to ensure that 100% of Supra's complete and correct LSRs submitted electronically flow through without manual intervention, in the same manner as BellSouth provides itself.

BellSouth

BellSouth maintains that disagreement with our decision is not a basis for a party to obtain reconsideration. BellSouth states that because the same manual processes are in place for both ALEC and BellSouth retail orders, the processes are competitively neutral, as required by the Act and the FCC.

Decision

Supra does not identify a point of fact or law which was overlooked or which we failed to consider in rendering our decision. The Order clearly reflects that we considered all of the evidence, and was persuaded that some manual handling occurs even when BellSouth processes complex orders for itself. As such, we concluded:

Based on the testimony which affirms that the same manual processes are in place for both ALEC and BellSouth retail orders and that BellSouth processes the orders in a non-

discriminatory manner, we agree with witness Pate's assertion that BellSouth's practices with respect to manual handling are competitively neutral. Unless or until such practices change for all ALECs, when processing Supra's complex orders, BellSouth should be permitted to manually process those orders that would be processed similarly for retail orders.

Order No. PSC-02-0413-FOF-TP at p. 137. Supra's additional arguments rehash points previously raised. Therefore, they do not warrant reconsideration, and Supra's Motion seeking such for this issue is denied.

X. Sharing of the Spectrum on a Local Loop.

Supra

Supra asserts that when it uses the voice spectrum of the loop and another carrier utilizes the high frequency spectrum (or vice versa), Supra must be compensated on half of the local loop cost. Supra states that BellSouth refuses to pay line sharing charges for customers with BellSouth xDSL whether provisioned as the FastAccess® or its ADSL Transport product, as tariffed under the FCC #1 access tariff. Now, says Supra, BellSouth has refused to provide either product on UNE-P circuits, and has disconnected the ADSL of any customer provisioned by UNE-P, as well as customers served by resale. Supra asserts that as a feature of the loop, BellSouth should not be allowed to disconnect already combined facilities. This, says Supra, would be in violation of 47 U.S.C. § 251(c)(3), 47 C.F.R. § 51.315(b), and the Supreme Court's ruling in AT&T v. Iowa Utilities Bd., 525 U.S. 366, 119 S.Ct 721 (1999). Supra notes that BellSouth witness Cox agreed that this conduct would violate the Supreme Court's ruling and FCC rules. Supra points out that such conduct in other states has been viewed as a significant barrier to competition. Supra believes that BellSouth incorrectly relies in this issue on FCC Order No. 01-26 and our Order No. PSC-01-0824-FOF-TP, stating it is not required to provide service to a UNE-P circuit. Those matters do not, however, contemplate the issue of disconnecting already combined networks, according to Supra.

Supra states that when it purchases a UNE-P loop, it becomes the owner of all the features, functions, and capabilities that the switch and loop is capable of providing. Supra believes our ruling on this issue exceeds our authority and that of FCC Order 01-26.

BellSouth

Here, BellSouth believes that Supra rehashes its prior arguments and attempts to introduce new evidence in this case. Neither, asserts BellSouth, is grounds for us to reconsider our decision. BellSouth maintains that if Supra wants its end users to have DSL service, then it must offer the ADSL service itself or in conjunction with another provider. BellSouth believes it is under no obligation to provide its own xDSL services over loops when it is no longer the voice provider. This is supported, says BellSouth, by the FCC's decision in its Line Sharing Order.

Decision

Although Supra has not met the standard for reconsideration on this point, we, on our own motion, reconsider our decision on this point in view of our decision regarding BellSouth's policy of disconnecting FastAccess in the FDN/BellSouth arbitration in Docket No. 010098-TP.

In the FDN/BellSouth arbitration, we concluded that BellSouth's policy of disconnecting its FastAccess service when a customer switched its voice service to an ALEC using UNE-P impeded competition in the local exchange market. Therefore, we ordered BellSouth to discontinue this practice. See Order No. PSC-02-0765-FOF-TP.⁷ We acknowledge that the FDN/BellSouth decision on this point was made in the context of an arbitration, and we note that we have generally determined that such decisions are restricted to the particular arbitration docket under consideration and the facts presented therein. In this instance, however, the decision regarding BellSouth's policy on FastAccess went to the legality of that policy under Florida law and our jurisdiction to address it. Thus, the decision at issue here does not hinge on any different or

⁷Order correctly subject to pending Motions for Reconsideration.

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additional facts present in Docket No. 010098-TP that are not present in this Docket. As such, our decision is not restricted solely to that arbitration.

We make a consistent finding in this proceeding that the practice of disconnecting FastAccess Internet Service when the customer switches voice providers creates a barrier to competition in the local exchange telecommunications market. We fashion an appropriate remedy for the situation pursuant to our authority under Section 364.01(4)(g), Florida Statutes, which provides, in part, that we shall, "[e]nsure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior. . . ." We are also authorized to act to remedy this barrier to competition by Sections 364.01(4)(b) and (d), Florida Statutes. Additional support for this recommended action may be derived from Section 706 of the Telecommunications Act, wherein Congress has directed state commissions to encourage competition and the deployment of advanced services, as well as from Section 202(a) of the Act, in which carriers are prohibited from engaging in any unjust discrimination in their practices or provision of services. Therefore, in the interest of promoting competition in accordance with the state statutes and the federal Telecommunications Act, we reconsider, on our own motion, our decision on Issue X and require BellSouth to continue providing FastAccess even when BellSouth is no longer the voice provider.

Y. Downloads of RSAG, LFACS, PSIMS and PIC databases.

Supra

Supra believes that BellSouth has failed to provide any evidence that the download of these databases is improper. In Supra's assessment, the record clearly indicates that BellSouth is providing discriminatory access to its OSS as well as the RSAG and LFACS databases. As such, Supra requests that we require BellSouth to provide Supra with a download of the RSAG and LFACS databases with no licensing agreements or charges.

BellSouth

BellSouth believes that Supra rehashes its arguments from prior submissions to in this docket, and Supra's arguments do not meet the standard for reconsideration.

Decision

Supra states that we failed to address credible evidence that BellSouth's ALEC OSS is discriminatory. We disagree. In the Order at page 142, we noted witness Ramos' concerns that the ALEC interface provided by BellSouth to access its OSS, including relevant databases, is inadequate, but disagreed that anything less than direct access to these databases constituted discriminatory conduct. The difference of opinion that we may have with Supra as to a point of fact, or the interpretation of a point of law, is not sufficient basis for reconsideration. Therefore, reconsideration of this issue is denied.

AA. Identification of Order Errors.

Supra

Supra incorporates its earlier arguments in Issues S, V, and W, and asserts that identifying all errors at once will prevent the need for submitting the order multiple times and reduce cost. Additionally, says Supra, BellSouth should be required to immediately notify Supra of such clarification in the same manner BellSouth notifies itself. Supra believes we fail to respond to the arguments and evidence put forth by Supra on this issue, and confuses the term "service order" with the more appropriate industry term "local service request." Supra points out that only ALECs submit LSRs. If BellSouth claims infeasibility, then BellSouth has the burden to substantiate such a claim, says Supra. Supra asserts that the record cannot support a conclusion which it believes ignores FCC Rules, and asks that BellSouth be required to provide Supra with the capability to submit orders electronically for all wholesale services and elements.

BellSouth

BellSouth believes that this is another issue of Supra demanding direct access to BellSouth's OSS, and of Supra rehashing its earlier arguments. As such, states BellSouth, these are not legitimate grounds for reconsideration.

Decision

We find that Supra has identified an error which warrants reconsideration. While the majority of the decision correctly differentiates between LSRs and Orders, and while Supra's brief uses the term "order" and not "LSR," we note that the Order requires BellSouth to identify all readily apparent errors in Supra's order at the time of rejection. (Emphasis added) The record and our apparent intent as highlighted by the discussion at the Agenda Conference supports reconsideration such that BellSouth should be required to identify all readily apparent errors in the **LSR** at the time of rejection.

BB. Purging Orders.

Supra

Supra contends that we simply accepted BellSouth's arguments and modified the issue so that we failed to review Supra's issue or assess Supra's evidence. It is Supra's belief that BellSouth has not substantiated its claim that it is Supra's failure to submit complete and correct LSRs that results in dropped and purged LSRs. There is no substantial evidence in the record to support our decision, says Supra, and it asks that BellSouth be required to only drop or purge ALEC LSRs in the same manner in which BellSouth drops or purges its service orders.

BellSouth

BellSouth does not believe it has the burden to prove that it would be technically infeasible to prevent Supra's orders from being purged. BellSouth agrees with our determination that the responsibility for a complete and accurate LSR rests with the ALEC. BellSouth contends that the request for reconsideration is devoid of merit.

Decision

Supra has not identified a point of fact or law which was overlooked or which we failed to consider in rendering our decision. We find nothing to reconcile Supra's claim that we modified the issue. Our Order is responsive to the issue as worded. See Order No. PSC-02-0413-FOF-TP at pp. 149, 151-152. As such, Supra's Motion regarding this issue is denied.

CC. Completion Notices for Manual Orders.

Supra

Supra seeks completion notices for manual orders in the same manner that BellSouth provides itself. Supra believes that we simply accepts BellSouth's argument of technical infeasibility and the availability of the CSOTS alternative, failed to create our own record on the issue, and failed to consider Supra's arguments on the issue. Supra asserts that BellSouth failed to meet its burden of proof regarding technical infeasibility and the existence of an acceptable alternative. As such, says Supra, we should reconsider our decision and require BellSouth to provide Supra with completion notices on manual orders.

BellSouth

BellSouth maintains that it does not have to prove technical infeasibility regarding this issue. It states that CSOTS provides ALECs access to the same service order information available to BellSouth's own retail units, and that Supra is not entitled to more.

Decision

Supra again fails to identify a point of fact or law which was overlooked or which we failed to consider in rendering our decision. We considered the evidence presented, and concluded, as set forth at page 155 of our Order, that:

Although a process in which BellSouth provides an electronic or manual completion notice may be simpler for Supra, BellSouth is not

obligated to provide completion notification to Supra that it does not provide to other ALECs or for its own retail service orders. Since information regarding the status of orders is made available to all ALECs on BellSouth's web-based CSOTS system, Supra is provided with sufficient real-time completion notification.

Supra has identified only a difference of opinion with our decision on this point, which does not give rise to reconsideration of this issue. As such, Supra's Motion for reconsideration of this issue is denied.

DD/EE. Liability in Damages/Specific Performance.

Supra

Supra believes that the decision here is inconsistent with our decisions in at least issues A, B, and C. Supra asserts that these issues are not required by Sections 251 and 252 of the 1996 Act, but that such rulings were made at the convenience of BellSouth.

BellSouth

BellSouth believes that Supra's argument is simply an accusation that we display favoritism towards BellSouth, and does not justify a reconsideration of the issues.

Decision

Here, Supra has not identified a point of fact or law which was overlooked or which we failed to consider in rendering our decision on either of these issues. Our posture on these issues does not conflict with any other issue. Supra fails to recognize the difference between matters upon which we must act to effectuate state or federal law and those, such as the matters at issue here, in which we are obligated to arbitrate the issue pursuant to the Act, but have discretion in requiring the inclusion of provisions in an agreement. See MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc., Order on the Merits, issued June 6, 2000, in Case No. 4:97cv141-RH, 112 F.Supp. 2d 1286, 1298 (distinguishing

between our obligation to arbitrate and our obligation to adopt a provision of this type). As such, Supra has not brought forth an argument which merits reconsideration, and reconsideration of this issue is denied.

IV. BellSouth's Motion for Reconsideration of Order No. PSC-02-0637-PCO-TP

BellSouth

In support of its Motion, BellSouth asserts that the Prehearing Officer failed to consider significant points of fact and law that require the denial of Supra's Motion. BellSouth argues that consistent with Supra's goal to frustrate the arbitration process and delay executing a new Interconnection Agreement with BellSouth, Supra filed its Motion for Extension of Time the day before the parties were required to file the Agreement pursuant to Order No. PSC-02-0413-FOF-TP, issued April 25, 2002. BellSouth contends that Supra has made at least 12 filings since the Final Order was issued in this matter, all of which have sought delay.

BellSouth argues that it raised five arguments in opposition to Supra's request for extension of time which were: (1) that Supra's request was moot because BellSouth had already executed and filed an Interconnection Agreement pursuant to our Final Order; (2) that it would be extremely prejudiced by a postponement; (3) that Supra would not be prejudiced if the Motion was denied; (4) that Supra's request for an extension was nothing but a bad faith attempt to delay the proceedings; and (5) that its research revealed no prior Commission order granting an extension of time to file an executed interconnection agreement when one party would be prejudiced and/or both parties did not consent to the extension. BellSouth asserts that the Prehearing Officer in granting in part Supra's Motion did not address all of its arguments, but only (1) distinguished the case it cited for the proposition that a party cannot refuse to sign an interconnection agreement following arbitration; and (2) cited to a previous and distinguishable Commission Order, wherein we granted BellSouth a 14-day extension of time to file an executed interconnection agreement.

BellSouth asserts that the only authority on which the Prehearing Officer relied in granting Supra's request was an order issued by us in 1997 in Docket No. 960833-TP. BellSouth states that in that docket we granted its motion for extension of time despite MCI's objection. BellSouth argues that in that docket it requested an extension because the agreement was due to be filed before the written order reflecting our rulings was due to be issued. BellSouth states that it therefore asked that the final agreement be postponed until after the written order was released so there would be no confusion about what the order actually required. BellSouth contends that in this case there is a clear, written order from us deciding the issues that were raised in the arbitration, and the parties have had ample time to incorporate those decisions into the new agreement. BellSouth states that, to date, Supra has steadfastly refused to participate in any discussions that would lead to a final agreement, even with regard to issues on which reconsideration has not been sought. BellSouth contends that the Prehearing Officer's reliance on that Order was entirely misplaced. BellSouth asserts that under the circumstances of this case, the Prehearing Officer should not have granted Supra's Motion.

BellSouth further argues that in the instant matter, the Prehearing Officer failed to consider several facts that should have been considered in deciding Supra's Motion. BellSouth asserts that the most detrimental fact that the Prehearing Officer failed to consider is that Supra's reason for the extension was predicated on a falsity. BellSouth contends that specifically, the Prehearing Officer overlooked the fact that Supra's premise for an extension - to avoid negotiating the "necessary and final language more than once" - is a sham and nothing but a ruse to camouflage its real intent. BellSouth argues that contrary to Supra's stated intent, the uncontroverted evidence establishes that Supra has not even attempted to negotiate "necessary final language" for any provision in the new agreement. BellSouth cites to correspondence and e-mails between the parties to support its position that Supra has refused to negotiate final language. BellSouth states that Supra's reason was because Supra believed it was premature since all administrative remedies had not yet been exhausted. BellSouth contends that Supra's refusal to discuss the final language of the new agreement continues today.

BellSouth asserts that Section 120.569, Florida Statutes, requires that a filing cannot be interposed for an improper purpose such as to harass or delay. BellSouth further asserts that Rule 28-106.204(5), Florida Administrative Code, requires that any request for an extension state good cause for the request. BellSouth contends that misleading us as to the reason for the extension in order to delay the proceeding violates these rules. BellSouth asserts that by ignoring the fact that Supra's reasoning for the extension is a complete falsehood, the Prehearing Officer effectively sanctioned Supra's bad faith filing. BellSouth concludes that we should reconsider the Prehearing Officer's decision and deny Supra's Motion for an extension in its entirety because it is not based on a valid, good faith request.

BellSouth argues that should we decide not to reverse the Prehearing Officer's decision, we should, in the alternative, expedite the decision on the pending motions for reconsideration and several other procedural issues. First, BellSouth requests that we decide the pending motions for reconsideration and the instant Motion at the June 11, 2002, Agenda Conference. Second, BellSouth asks that we expedite the process for issuing a written order once the motions for reconsideration have been decided. Specifically, BellSouth asks that the order be issued within five (5) days of the June 11, 2002, Agenda Conference.

Third, BellSouth requests that we provide specific instructions to the parties in our written order and detail the consequences of a party's refusal to sign the agreement. Specifically, BellSouth asks that we (a) prescribe the language changes, if any, to the agreement submitted by BellSouth on April 25, 2002, that are necessary to effect whatever ruling we make on the reconsideration motions; (b) order the parties to submit a signed agreement containing the conforming language within seven (7) days of the order; (c) order BellSouth to file the Agreement with its signature within the time specified and approve the contract as submitted if Supra fails to sign the agreement within the ordered time period; and (d) order the parties to immediately operate under the new Agreement in accord with Section 2.3 of the October 1999 Agreement or relieve BellSouth of the obligation to provide wholesale service to Supra in Florida if Supra refuses to sign the follow-on Agreement within the time specified. BellSouth asserts that a one month delay will be extremely prejudicial to it.

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BellSouth suggests as an alternative protective measure, we could order Supra to submit to us all payments it is withholding from BellSouth while the administrative process is concluded.

Fourth, BellSouth requests that we sanction Supra for the bad faith actions described in its Motion and in various motions filed in this docket by BellSouth and award BellSouth attorney fees and all other appropriate relief. BellSouth concludes that if we are unwilling to reverse the Prehearing Officer's ruling, we should nevertheless recognize the untenable position in which it believes Supra has placed us and BellSouth, and should take whatever action is necessary to expedite the execution of the follow-on agreement and thereby put an end to the virtual free ride that Supra has enjoyed since October 1999.

Supra

Supra filed its Response in Opposition of BellSouth's Motion for Reconsideration of Order No. PSC-02-0637-PCO-TP, on May 22, 2002. In support of its Response, Supra contends that we did not overlook or fail to consider a point of fact or law in rendering Order No. PSC-02-0637-PCO-TP.

Supra states that in its Motion for Extension of Time, it argued that submitting a joint interconnection agreement prior to the resolution of the motion for reconsideration directed to the merits, could potentially require the parties to negotiate final interconnection agreement language twice. Supra argues that contrary to BellSouth's position, there is nothing false about this statement. Supra cites to Order No. PSC-01-1951-FOF-TP at page 8, for the proposition that we held that "[u]ntil the question of reconsideration is determined, the final agreement can not be drafted." Supra further cites to Docket No. 000731-TP, in which BellSouth argued, and we accepted, the proposition that the parties cannot finalize an interconnection agreement until resolution of any motion for reconsideration addressed the merits of the arbitration. Supra contends that currently there are motions for reconsideration pending which if granted in whole or part would require the parties to negotiate different language. Supra asserts that there was nothing false in the reasons provided for the extension of time. Supra also contends that it not wanting to negotiate a final interconnection agreement twice is not evidence

of bad faith or intent, but rather simply an acknowledgment of practical considerations. Further, Supra argues that BellSouth already raised these positions in its Opposition to the extension of time. Therefore, Supra contends that BellSouth has failed to show that the Prehearing Officer overlooked or failed to consider any point of fact, and thus BellSouth failed to establish a basis for reconsideration.

Further, Supra contends that BellSouth failed to establish that the Prehearing Officer overlooked or failed to consider any point of law. Supra argues that Order No. PSC-02-0637-PCO-TP, is completely consistent with our prior rulings in the MCI-BellSouth arbitration in Docket No. 960833-TP, and the AT&T-BellSouth arbitration in Order No. PSC-01-1951-FOF-TP. Supra asserts that in both proceedings, BellSouth sought and was granted an extension of time in which to file a joint interconnection agreement after resolution of the pending motions for reconsideration addressed the merits of those arbitrations. Supra contends that BellSouth does not now argue that the rule of law allowing such extensions is flawed, but rather that we should not have granted an extension of time under the purported circumstances of this case. Supra concludes that because BellSouth does not question the rule of law allowing such extension of time (as established by BellSouth in the MCI-BellSouth and AT&T-BellSouth arbitrations), BellSouth has failed to demonstrate that we overlooked or failed to consider any point of law, and thus BellSouth has failed to establish a basis for reconsideration.

Supra further maintains that BellSouth's requests for alternative relief are ludicrous and without any basis in fact or law. Supra asserts that BellSouth has failed to support these requests with any legal authority or precedent. Supra states that there is no legal basis for BellSouth's request for expedited treatment. Supra argues that BellSouth's request for expedited treatment of its motions for reconsideration is both untimely and would violate our obligation to first address Supra's pending motions for recusal. Supra cites to Fuster-Escalona v. Wisotsky, 781 So.2d 1063 (Fla. 2002), for the proposition that the Florida Supreme Court held that courts must immediately act upon motions for recusal when presented, and that any ruling upon the merits prior to addressing a motion for recusal is reversible error. Supra contends that BellSouth is seeking to "leap-frog" the recusal

motions and obtain a rush to judgement on its pending reconsideration motions in an effort to force a new interconnection agreement on Supra. Supra argues that this "leap-frog" attempt is directly contrary to the Florida Supreme Court's holding in Fuster-Escalona, and therefore should be denied.

Supra also argues that BellSouth's request for expedited treatment is simply a plea for preferential treatment. Supra contends that BellSouth is seeking further favors by requesting expedited consideration of matters which require no expedited attention. Supra states that BellSouth's basis for its request is that Supra has failed to pay for BellSouth's improper billing and has dared to dispute such bills before an Arbitration Tribunal. Supra contends that it is important to note that BellSouth is not claiming that Supra will not pay BellSouth for service, but rather that Supra has disputed BellSouth's improper billing and continues to bring such improper billing to an Arbitration Panel for resolution. Supra asserts that according to BellSouth, the fair and impartial rulings being issued by the Arbitration Panel are somehow causing BellSouth harm; perhaps because BellSouth is not accustomed to being denied biased and preferential treatment. Supra thus concludes that BellSouth's request should be denied.

Supra also states that there is no legal basis for BellSouth's request to force a new interconnection agreement upon Supra, irrespective of its consent. Supra contends that BellSouth's proposed interconnection agreement does not appear to incorporate the voluntary agreements made by the parties which had not been submitted for arbitration. Supra argues that the proposed interconnection agreement is merely BellSouth's interpretation of Order No. PSC-02-0413-FOF-TP. Supra cites to Order No. PSC-97-0550-FOF-TP, issued May 13, 1997, in Docket No. 961173-TP, in which we stated that:

[t]he process of approving a jointly filed agreement by the Commission consists of approving language that was agreed to by the parties, discarding the non-arbitrated language that was not agreed upon and determining the appropriate contract language for those sections that were arbitrated, yet still in dispute.

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Order No. PSC-97-0550-FOF-TP at pp. 12-13. Supra argues that, accordingly, any final ruling by us on arbitrated language is only one part of the process used in arriving at a final interconnection agreement.

Supra also argues that Order No. PSC-97-0550-FOF-TP requires the parties to jointly execute a final interconnection agreement before the same is submitted to us for approval and that a party which fails to sign an arbitrated interconnection agreement may be subject to a show cause order and fines in the event there is no good cause for failing to execute the agreement. Order No. PSC-97-0550-FOF-TP at pages 20-21. Supra contends that Sections 350.127 and 364.015, Florida Statutes, set forth our powers to enforce our orders and rulings and nothing in these statutes or any other law gives us the authority to execute interconnection agreements on behalf of any telecommunications company or to otherwise impose an interconnection agreement on any telecommunication company which has not executed such document. Supra asserts that nothing in the current Interconnection Agreement allows BellSouth to terminate that agreement by having us adopt a new agreement for Supra. Supra argues that therefore, there is no legal authority for any of the relief requested by BellSouth.

In addition, Supra contends that BellSouth has not provided any factual or legal basis to support its request for sanctions, attorneys' fees and other relief. Supra asserts that it has done nothing inappropriate or violative of any rules, statutes, case law, or other legal authority. Thus, Supra concludes that any such request by BellSouth should be denied.

Decision

As noted previously, the standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which we failed to consider in rendering our Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). Further, in a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State

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ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958).

In its Motion for Reconsideration of Order No. PSC-02-0637-PCO-TP, BellSouth attempts to reargue points of fact and law that were raised in its Motion in Opposition to Supra's Request for Extension of Time, and which were properly considered. BellSouth argues, however, that since there is no detailed point-by-point analysis of the five arguments it raised in its Motion in Opposition in Order No. PSC-02-0637-PCO-TP, the Prehearing Officer must have failed to consider or have overlooked these arguments. BellSouth nevertheless concedes that these same arguments were raised in its Motion in Opposition of Supra's extension of time, thereby bringing these arguments to the Prehearing Officer's attention and consideration. Moreover, BellSouth's arguments that Supra's request for an extension was purely for delay and that it would be prejudiced by an extension of time were specifically noted in Order No. PSC-02-0637-PCO-TP. Therefore, BellSouth's argument that the Prehearing Officer failed to consider or overlooked the facts raised and the arguments made in its Opposition to the requested extension of time is without merit.

Moreover, BellSouth's contention that the Prehearing Officer misapplied Order No. PSC-97-0309-FOF-TP, issued in Docket 960833-TP, simply because the circumstance are different is also without merit. BellSouth appears to argue that because it has alleged bad faith on Supra's part in attempting to further delay these proceedings that the Prehearing Officer should not have granted the extension based on Order No. PSC-97-0309-FOF-TP. BellSouth acknowledges that in Docket No. 960833-TP, BellSouth was granted an extension of time over MCI's objection. In Order No. PSC-02-0637-PCO-TP, Order No. PSC-97-0309-FOF-TP was specifically cited for the proposition that we have granted extensions of time even though one of the parties objects. Thus, the law has been correctly applied. BellSouth's reargument regarding Supra's alleged delay and bad faith does not constitute a point of law which was overlooked or which the Prehearing Officer failed to consider. Furthermore, these facts, as well as the pertinent law, were considered by the Prehearing Officer since BellSouth raised these facts in its Motion in Opposition. Because these arguments are now being raised a second time, they constitute improper reargument. Thus, we agree with Supra that BellSouth has failed to demonstrate that the

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Prehearing Officer failed to consider or overlooked any point of fact or law in rendering Order No. PSC-02-0637-PCO-TP.

In addition, it does not appear that Supra's request for an extension of time was based on a falsity as BellSouth claims. Supra's request was based on the fact there are several pending motions for recusal and reconsideration of the final order. Further, in its request, Supra states that it does not want to negotiate final language twice. Due to the fact that the outstanding motions for reconsideration may impact on the final language of the interconnection agreement, we do not find that Supra's statement that it does not want to negotiate final language twice can be construed as a falsehood. The request in this instance may merely be for practical considerations rather than nefarious bad faith motives. As evidenced by Order No. PSC-97-0309-FOF-TP, even BellSouth has requested extensions of time over the objection of the opposing party without implication of nefarious motives.

BellSouth has also requested expedited approval of the agreement in the alternative, should we deny its request to reconsider Order No. PSC-02-0637-PCO-TP. First, some, if not all, of BellSouth's proposed request is a request for reconsideration under a different guise. Specifically, BellSouth requests that Supra and BellSouth be ordered to submit a signed interconnection agreement within seven (7) days of the order on reconsideration. Staff notes that Order No. PSC-02-0637-PCO-TP grants the parties fourteen (14) days after the final order disposing of Supra's Motion for Reconsideration in which to file their final, signed interconnection agreement. Further, BellSouth asks for sanctions and attorney fees for Supra's alleged bad faith acts. As noted previously, this issue was specifically brought to the Prehearing Officer's attention and consideration in BellSouth's Motion in Opposition to Supra's request for extension of time.

BellSouth's request that we decide the pending motions for reconsideration and the instant motion at the June 11, 2002, Agenda Conference, is moot. The motion for recusal was addressed prior to the pending motions at the June 11, 2002, Agenda Conference. The final order on Supra's Motion for Reconsideration will be issued at the soonest practicable date after our decision on the Motion at Agenda Conference. As such, BellSouth's request for a five (5) day time frame on issuing the final order is denied.

Since Supra has not yet failed to execute a final arbitrated interconnection agreement under the terms of Order No. PSC-02-0637-PCO-TP, it is premature to address BellSouth's other requests. As noted by Supra, we have the authority to show cause a party which fails to sign an arbitrated interconnection agreement in the event there is no good cause for failing to execute the agreement. We now place the parties on notice that if the parties or a party refuses to submit a jointly executed agreement as required by Order No. PSC-02-0637-PCO-TP and Order No. 02-0143-FOF-TP within fourteen (14) days of the issuance of a final order on Supra's Motion for Reconsideration, we may impose a \$25,000 per day penalty for each day the agreement has not been submitted thereafter in accordance with Section 364.285, Florida Statutes.

For the foregoing reasons, we find that BellSouth has failed to identify a mistake of fact or law in the Prehearing Officer's decision. Therefore, we deny BellSouth's Motion for Reconsideration of Order No. PSC-02-0637-PCO-TP.

V. BellSouth's May 24, 2002, Motion for Reconsideration of Order
No. PSC-02-0663-CFO-TP

BellSouth

BellSouth contends that we should reconsider the decision to deny confidential treatment to the information in Supra's April 1, 2002, letter to Commissioner Palecki because: 1) the decision overlooks or fails to consider several points of fact and law; 2) it potentially violates a Federal Court's order; 3) it rewards Supra for violating terms of its interconnection agreement with BellSouth, as well as terms in our Order and a Federal Court order; 4) it misinterprets Section 364.183, Florida Statutes; 5) it "eviscerates" the right to have certain information protected in accordance with Our rules and Chapter 364, Florida Statutes; and 6) it will have a "chilling effect" on the disclosure of confidential information between parties in Our proceedings.

Specifically, BellSouth contends that the information contained in the letter must remain protected and that the Order must be reconsidered because the Prehearing Officer failed to consider that the parties are contractually bound to keep this information confidential. BellSouth emphasizes that Section 15.1

of the parties' interconnection agreement requires that they treat this information as confidential. BellSouth also emphasizes that the CPR Rules for Non-Administered Arbitration, which BellSouth contends were applicable to the commercial arbitration, requires, in pertinent part, that, " . . . the parties, the arbitrators and CPR shall treat the proceedings, and related discovery and the decisions of the tribunal, as confidential. . . unless otherwise required by law or to protect the legal right of a party." Citing CPR Rules, Rule 17.

BellSouth argues that the Prehearing Office erred by finding that the information should be deemed public simply because it was submitted for public filing, in spite of the contractual obligations to keep the information confidential. BellSouth maintains that Supra's breach of the parties' contractual obligations provides BellSouth certain legal remedies against Supra, but the breach does not "strip" the subject information of its confidential status. BellSouth contends, however, that the Order actually rewards Supra for its breach and that it will encourage other parties to follow similar tactics in the future. Furthermore, BellSouth asserts that the decision defeats the purpose of protective or non-disclosure agreements between parties. BellSouth contends that the Prehearing Officer's decision fails to properly consider these points, and should, therefore, be reversed.

BellSouth also believes that the Order effectively allows Supra to violate an order from the Federal District Court, wherein Judge King, in Civil Action No. 01-3365, determined that the substance of the commercial arbitration proceeding:

. . . may contain proprietary or confidential information, which the parties agreed to be held in confidence in accord with the terms of the Agreement. Therefore, to unseal the filings in this case would contravene the confidentiality provision with which the parties agreed.

Citing October 31, 2002 Order at pp. 5-6. BellSouth adds that the Court's Order did not allow for disclosure of the subject information in quasi-judicial proceedings such as those before us.

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BellSouth further asserts that Order No. PSC-02-0663-CFO-TP violates our previous Order, Order No. PSC-02-0293-CFO-TP, which granted confidentiality to some of the same information at issue in Order No. PSC-02-0663-CFO-TP. Therefore, BellSouth contends that these Orders are in conflict and that the prior Order granting confidentiality should control. Furthermore, if Order No. PSC-02-0663-CFO-TP stands, BellSouth argues that it essentially sanctions Supra's violation of Order No. PSC-02-0293-CFO-TP.

In addition, BellSouth argues that the decision in Order No. PSC-02-0663-CFO-TP misinterprets and misapplies Section 364.183, Florida Statutes. BellSouth maintains that the decision reaches an unreasonable conclusion not contemplated by lawmakers in that it could allow Supra, or any party privy to confidential information, to eliminate the confidential status of the information simply by submitting it for public filing.⁸ BellSouth maintains that this would appear to be contrary to Section 364.183(3), Florida Statutes, which acknowledges that information is not considered to be "publicly disclosed" if provided to another party pursuant to a protective agreement. BellSouth contends that this acknowledgment would not have been included in the statute had the Legislature intended another party to be able to disclose confidential information contrary to such a protective agreement.

BellSouth further contends that the information has not been disclosed because it filed a Notice of Intent to seek confidential classification the day after the letter was received by us, and that it has followed the provisions of Rule 25-22.006, Florida Administrative Code, regarding seeking confidential classification of the material.

BellSouth also notes that it is seeking enforcement of its rights on this issue in another forum. BellSouth states that it is asking the Court to consider whether Supra violated the Agreement and other prohibitions by disclosing the information.

⁸BellSouth notes that one should not "blindly follow statutory language in derogation of common sense." Sainz v. State, 811 So. 2d 683, 693, (Fla. App. 3rd DCA 2002) (concurring opinion of Judge Ramirez).

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Finally, BellSouth argues that the public interest requires that Order No. PSC-02-0663-CFO-TP be reconsidered and reversed. BellSouth contends that we are, otherwise, acquiescing to Supra's malfeasance, which will have a chilling effect on future cases because parties will be hesitant to share information pursuant to a protective agreement.

Decision

As previously noted, the standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which we failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

On April 1, 2002, Supra's Chairman and CEO, Olukayode A. Ramos, sent a letter, with attached exhibits (Document No. 04493-02 and cross-referenced Documents Nos. 03731-02 and 03690-02), to Commissioner Palecki's office and copied the other Commissioners, the docket file, the General Counsel's office, the State Attorney's office, and BellSouth's attorney.

On April 23, 2002, BellSouth filed a Request for Specified Confidential Classification for the letter. On April 24, 2002, BellSouth filed an Amended Request for Confidential Classification regarding this same information to correct a typographical error in its initial Request. On May 1, 2002, Supra filed an Objection to BellSouth's Request.

By Order No. PSC-02-0663-CFO-TP, issued May 15, 2002, the Prehearing Officer denied confidential treatment for the material contained in the letter, finding that:

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Based on the definition of proprietary confidential business information in Section 364.183(3), Florida Statutes, I find that BellSouth's Request for Confidential Classification should be denied. The letter submitted by Supra on April 1, 2002, was submitted as a public document and as such, became a matter of the public record.

Order at p. 3.

Subsequently, by Order No. PSC-02-0700-PCO-TP, issued May 23, 2002, the Prehearing Officer acknowledged BellSouth's May 16, 2002, Notification to us of its intent to exercise its rights under Rule 25-22.006(10), Florida Administrative Code, in accordance with the requirements set forth in that subsection of the rule. Therefore, the material for which confidential treatment was denied by Order No. PSC-02-0663-CFO-TP will continue to receive confidential treatment in accordance with Rule 25-22.006(10), Florida Administrative Code, through completion of judicial review.

On May 24, 2002, BellSouth filed its Motion for Reconsideration of the Order Denying Request for Confidential Classification, Order No. PSC-02-0663-CFO-TP. Supra did not file a response.

BellSouth has not identified a mistake of fact or law in the prehearing officer's decision to deny confidential treatment to the information contained in Supra's April 1, 2002, letter. Instead, BellSouth mainly reargues points already presented and addressed, articulates its disagreement with the Prehearing Officer's decision as a matter of policy, and more fully alleges how it believes that Supra has violated a variety of our rules and Orders as well as those of the Federal District Court. BellSouth has not, however, identified an error in the decision. Mere disagreement with the conclusion reached does not satisfy the standard for reconsideration.

Specifically, with regard to BellSouth's allegations that the parties were obligated by contract, by CPR rules, and by the Federal Court's October 31, 2001, Order to keep the information confidential, the Prehearing Officer fully considered the

contractual obligation arguments at pages 1 and 2 of Order No. PSC-02-0663-CFO-TP.⁹ He concluded, however, that, "The information has been disclosed and such disclosure was not made pursuant to ". . . a statutory provision, an order of a court or administrative body, or private agreement," as allowed by Section 364.183, Florida Statutes." Order at p. 3. Therefore, confidential treatment was denied. As for the more specific arguments regarding the Order of the Federal Court and the CPR Rules, staff notes that these are new arguments which are not appropriate for a Motion for Reconsideration. Nevertheless, even if considered, they do not demonstrate an error in the Prehearing Officer's decision in that these arguments, like those regarding the parties' contractual obligations, raise issues regarding whether the parties themselves complied with pertinent rules and orders. Neither the contract, the CPR Rules, or the Federal Court's October 31, 2001, Order address how an administrative body should handle the subject information once it is submitted as a public record. As such, BellSouth has not identified a mistake of fact or law in Order No. PSC-02-0663-CFO-TP.

As for the contention that the decision violates another of our orders, this is also another new argument that is not appropriate on reconsideration. Nevertheless, this argument also does not demonstrate an error in the decision in Order No. PSC-02-0663-PCO-TP. BellSouth contends that there is a conflict between Order No. PSC-02-0293-CFO-TP and Order No. PSC-02-0663-CFO-TP in that certain information granted protection by the first Order is denied similar protection by the second Order. We note, however, that Order No. PSC-02-0293-CFO-TP was issued on March 7, 2002, before Supra submitted its April 1, 2002, letter.¹⁰ As such, when Order No. PSC-02-0293-CFO-TP was issued, the information had not yet been publicly disclosed. Order No. PSC-02-0663-CFO-TP represents a change in circumstances regarding any information that

⁹Staff notes that BellSouth's line-by-line justification was also attached to the Order as Attachment A, further demonstrating the Prehearing Officer's consideration of all of BellSouth's arguments.

¹⁰Order No. PSC-02-0293-CFO-TP was also issued prior to BellSouth's Request for Confidential Classification, but was not referenced therein.

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had previously been granted confidential status by Order No. PSC-02-0293-CFO-TP. Furthermore, whether or not Order No. PSC-02-0663-CFO-TP effectively allows Supra to get away with violating Order No. PSC-02-0293-CFO-TP, as BellSouth contends, is not a proper issue for reconsideration in that it is a new argument and does not identify an error in the decision.¹¹ Instead, it demonstrates only that BellSouth disagrees with the Prehearing Officer's conclusion from a policy and fairness perspective.

Similarly, BellSouth's argument that the decision is contrary to public policy considerations does not identify a mistake of fact or law in the Prehearing Officer's decision. BellSouth contends that Order No. PSC-02-0663-CFO-TP will have a "chilling effect" on parties' willingness to share with each other confidential information in Our proceedings. Again, this does not identify an error in Order No. PSC-02-0663-CFO-TP, and it is a new argument raised for the first time on reconsideration. Thus, it is rejected. Nevertheless, we do not believe that the Order will have the argued effect, because it only addresses how the agency will handle the information; it does not seek to enforce or otherwise construe the parties' protective agreement. To the extent that a "chilling effect," if any, occurs along the lines argued by BellSouth, we anticipate that it would more likely occur as a result of litigation regarding the parties' contractual obligations to maintain the confidentiality of the subject information.

As for BellSouth's argument that the Prehearing Officer has misconstrued Section 364.183(3), Florida Statutes, BellSouth is incorrect and has not identified an error in the decision. Section

¹¹ We interpret Order No. PSC-02-0293-CFO-TP as setting forth how the agency will treat the information that has been filed with it pursuant to Section 364.183, Florida Statutes, and Chapter 119, Florida Statutes. We do not interpret the Order to require anything of the parties, other than that they continue to treat the information as confidential and file a renewed request in 18 months if they wish to maintain the confidential status of the information. The parties' agreements, the CPR Rules, and the Federal Court's October 31, 2001, Order address more directly the confidentiality requirements applicable to the parties themselves.

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364.183(3), Florida Statutes, defines "proprietary confidential business information as:

. . . information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. (Emphasis added)

The prehearing officer's interpretation of this plain language is correct that the information can only be afforded confidential classification if it has not otherwise been disclosed. The statute also includes specifically identified exceptions that allow information to be treated as confidential by this agency even if the information has been previously disclosed, if the information was previously disclosed pursuant to "a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public." The Prehearing Officer concluded that the information disclosed in Supra's April 1, 2002, letter was not disclosed pursuant to one of the exceptions elucidated in the statute; therefore, he found that the information should not be afforded confidential treatment. BellSouth has not identified an error in this interpretation, but instead a desire for a broader reading of the statute. We find, however, that the Prehearing Officer's interpretation comports with the "plain meaning" of the statute; and as such, BellSouth's argument does not meet the standard for a Motion for Reconsideration.

Finally, with regard to BellSouth's contention that the information was not disclosed and that it timely filed a Notice of Intent in accordance with Rule 25-22.006(3)(a)(1), Florida Administrative Code, we note that the information was, in fact,

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made public in that it was filed as a public document in this Docket, as well as sent to our staff and other agencies, without any indication that the document should be treated as confidential.¹² Such disclosure was apparently not made pursuant to any of the allowed exceptions set forth in Section 364.183(3), Florida Statutes. As noted at page 2 of Order No. PSC-02-0663-CFO-TP:

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the 'sunshine.'

The Prehearing Officer acknowledged that the information had already been disclosed before BellSouth notified us that it wished the information to be treated as confidential, noting that, "Once disclosed, it is not possible to 'put the chicken back in the egg' so to speak." Order No. PSC-02-0663-CFO-TP at p. 3. BellSouth has not identified a mistake of fact or law in this conclusion.

For all of the above reasons, BellSouth's Motion for Reconsideration is denied. However, in accordance with Rule 25-22.006(10), Florida Administrative Code, and Order No. PSC-02-0700-PCO-TP, issued May 23, 2002, the information should continue to retain confidential treatment through judicial review.

¹²We note that before BellSouth's Notice of Intent was received on April 2, 2002, the April 1, 2002, letter had been briefly posted on our's web site, which allowed the document to be even more easily accessed by the public.

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VI. Supra's Motion for Reconsideration of Order No. PSC-02-0700-
PCO-TP

Supra

Supra asks that we reconsider the Prehearing Officer's decision acknowledging BellSouth's compliance with Rule 25-22.006(10), Florida Administrative Code, and requiring that the information that had previously been denied confidential classification by Order No. PSC-02-0663-CFO-TP continue to receive confidential treatment pending resolution of appeal in accordance with Rule 25-22.006(10), Florida Administrative Code. Supra asserts that it was not given adequate time to respond to BellSouth's Motion as allowed by Rule 28-106.204(1), Florida Administrative Code. Under the Rule, Supra contends that it had until May 23, 2002, to respond. Supra notes, however, that the Order was issued on May 23, 2002, without benefit or consideration of Supra's response.

Supra further contends that had the Prehearing Officer considered Supra's response, he would have seen that the Rule and the case law presume that the information at issue has not already been publicly disclosed. Thus, Supra asks that Order No. PSC-02-0700-PCO-TP be reconsidered for the Prehearing Officer's failure to properly consider Supra's arguments.

BellSouth

BellSouth filed a response to Supra's Motion on June 7, 2002.

Decision

As previously noted, the standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be

granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

Supra has not identified a mistake of fact or law in the Prehearing Officer's decision.

Specifically, as recognized by the Prehearing Officer, Rule 25-22.006(10), Florida Administrative Code, states:

Judicial Review. When the Commission denies a request for confidential classification, the material will be kept confidential until the time for filing an appeal has expired. The utility or other person may request continued confidential treatment until judicial review is complete. The request shall be in writing and filed with the Division of the Commission Clerk and Administrative Services. The material will thereafter receive confidential treatment through completion of judicial review.

See also Order No. PSC-0700-PCO-TP at p. 3. The meaning of the rule is clear that upon notice in writing, material denied confidential treatment will continue to receive confidential treatment through completion of judicial review. There are no presumptions, allusions, or otherwise to the contrary. Furthermore, while referring to what it believes to be pertinent case law, Supra has provided no citations. As such, Supra has not identified an error in the Prehearing Officer's decision.

In addition, we emphasize that Rule 28-104.204(1), Florida Administrative Code, provides, in pertinent part, that, "When time allows, the other parties may, within 7 days of service of a written motion, file a response in opposition." (Emphasis added). This Rule leaves it to the Prehearing Officer's discretion to determine "when time allows" for the filing of responses. BellSouth's Motion was styled as an "Emergency" motion, and the subject matter pertained to the handling of information that BellSouth believes meets the standard for confidential

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classification--an issue which is sensitive and worthy of expedited resolution. While the Prehearing Officer disagreed that the information meets the standard for confidential classification, his Order recognizes that our rules require that parties have a meaningful opportunity to pursue judicial relief if they disagree with a decision that information should be declassified. While Supra may disagree with the Prehearing Officer's decision to issue an expedited ruling without benefit of Supra's response, Supra has not identified an error in the Prehearing Officer's decision to do so.

For these reasons, Supra's Motion for Reconsideration of Order No. PSC-02-0700-PCO-TP is denied.

VII. Supra's Cross Motion for Clarification and Opposition to
BellSouth's Motion for Reconsideration and Partial
Reconsideration of Order No. PSC-02-0663-FOF-TP

Pursuant to Rule 25-22.0376, Florida Administrative Code, the filing of a motion for reconsideration of non-final orders is due within 10 days of the issuance of the order. Supra seeks redress of Order No. PSC-02-0663-FOF-TP, issued by the Prehearing Officer on May 15, 2002. However, Supra filed its Motion on May 31, 2002. While Supra maintains that a cross-motion for reconsideration is appropriate under Rule 25-22.060(1)(b), Florida Administrative Code, that rule is applicable only to final orders of this Commission, and as such, is inapplicable to Order No. PSC-02-0663-FOF-TP. Thus, Supra's Motion is untimely, and is hereby denied.

Based upon the foregoing, it is

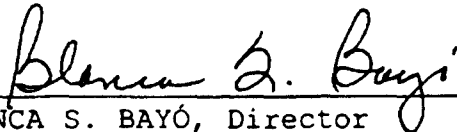
ORDERED by the Florida Public Service Commission that the Motions identified in this Order are resolved as set forth within the body of this Order. It is further

ORDERED that the parties shall submit a signed agreement that complies with our decisions in this docket for approval within 14 days of issuance of this Order. It is further

ORDERED that this docket shall remain open pending our approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

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By ORDER of the Florida Public Service Commission this 1st Day
of July, 2002.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

WDK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15)

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days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6) or 3) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.